

<b>DALE A. EDWARDS</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 199,988
<b>JIM MITTEN TRUCKING, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>CONTINENTAL WESTERN INSURANCE</b>	)	
<b>COMPANY</b>	)	
Insurance Carrier	)	

Respondent appeals the Post-Award Medical Award issued by Special Administrative Law Judge Jeff K. Cooper on June 14, 2004. Claimant was awarded a prosthetic leg, identified as a “C-leg,” as being medically necessary for claimant’s ongoing care and treatment. The Special Administrative Law Judge (Special ALJ) also awarded to claimant’s attorney post-award attorney fees in the amount of \$3,500 comprising 28 hours at the rate of \$125 per hour.

1. Whether the Administrative Law Judge exceeded his jurisdiction and erred in ordering respondent to provide claimant with an expensive “C-Leg” when the evidence shows that the C-leg was not medically reasonable and necessary and that a significantly cheaper alternative would adequately meet all of the claimant’s medical needs?
2. Whether the Administrative Law Judge exceeded his jurisdiction and erred in ordering respondent to pay claimant’s attorney fees? Whether the amount of attorney fees awarded is excessive?

3. All other issues decided adversely to respondent and insurance company.<sup>1</sup>

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire evidentiary file contained herein, the Appeals Board (Board) finds as follows:

Claimant suffered a significant injury to his right leg and low back on February 4, 1995, when his truck was blown off the road by a strong wind. The accident resulted in an amputation of claimant's right leg above the knee and the attachment of a prosthetic leg, as well as several surgeries over a several-year time span. The dispute in this matter centers around whether claimant should be provided with a "C-Leg," which costs in excess of \$47,000, or whether a cheaper alternative is suitable.

Several witnesses testified regarding the C-Leg, and the expensive hydraulics and engineering accessories associated with this leg. Claimant testified, as was agreed by all experts, that his current prosthetic leg is worn out to the point where it is needing repairs regularly. Claimant is having difficulties ambulating because of these engineering difficulties.

Shannon Carr, the senior office administrator for Hanger Prosthetics & Orthotics, testified in this matter, recommending the C-Leg for claimant. Additionally, Ed Gormanson, a certified prosthetist since 1979 and claimant's prosthetist for several years, recommended the C-Leg as being ideal for claimant's very active lifestyle. He testified that claimant, who has been a commercial truck driver since the year 2000, is in and out of trucks and regularly wears out the various parts on his current prosthetic leg. He estimated the C-Leg would cost approximately \$47,500, whereas it would cost roughly \$30,000 to replace claimant's current leg. He also recommended the C-Leg for claimant due to claimant's very active lifestyle.

Brandon Quick, a certified prosthetist from Nebraska Orthotics and Prosthetics, met with claimant in December of 2003 and further provided support for the recommended C-Leg. He found claimant to lead a very active lifestyle and felt the C-Leg would greatly enhance his life activities. In particular, the C-Leg actually makes it possible to walk up and down a hill without having to turn sideways and sidestep on the slope. He acknowledged that a model compatible with claimant's current leg could be purchased for

---

<sup>1</sup> Application for Review Before the Workers Compensation Board and Docketing Statement filed June 29, 2004.

approximately \$25,000, but did not recommend the cheaper model due to claimant's lifestyle and his propensity to wear out the mechanisms.

Finally, Bradley W. Bruner, M.D., a board certified specialist in orthopedic and sports and medicine, who has been claimant's treating doctor since the accident in 1995, also recommended the C-Leg. It is acknowledged, however, that Dr. Bruner equivocated somewhat when he was told the cost associated with the providing of the C-Leg. However, he acknowledged that the C-Leg would allow claimant greater function mobility. It is noted that the concern raised by Dr. Bruner with regard to the C-Leg's cost discussed a \$60,000 price tag, which is the normal fee charged for this apparatus. However, as noted in Claimant's Exhibit 2 to the transcript of the Post-Award Hearing of December 11, 2003, the discounted price of the C-Leg is \$47,588.78, which is considerably less than the \$60,000 price tag considered by Dr. Bruner.

The Board also finds significant the May 29, 2003 report of Hanger Prosthetics & Orthotics admitted as Claimant's Exhibit 2 to the transcript of the Post-Award Hearing, which discusses the advantages of the C-Leg over normal prosthetic devices. The C-Leg allows for acceleration and deceleration, which is not available on the normal leg. Additionally, the C-Leg greatly reduces the need to compensate on the contralateral limb, which claimant noted has led to significant difficulties with his opposite knee. Possibly the most significant element of the C-Leg benefit deals with an amputee's ability to walk up and down hills in a normal fashion, rather than having to sidestep. Also, the ability to walk across rough terrain greatly benefits the amputee's ongoing work situation. As claimant is a very active individual who drives trucks for a living, his exposure to ramps, inclines and rough terrain would be significant. The Board finds that the C-Leg is not an excessive expense, but instead appears to be reasonable and necessary to assist claimant in dealing with the effects of this significantly traumatic injury.<sup>2</sup>

The Board must next consider claimant's attorney's request for attorney fees pursuant to K.S.A. 44-536(g) (Furse 1993). The statute mandates that attorney fees awarded will be reasonable and customary when ordered pursuant to or in association with requests for additional medical benefits. The \$125-per-hour fee is appropriate and has been awarded by the Board after taking into consideration the expertise of the attorney in workers compensation matters. In addition, the 28 hours awarded by the Special ALJ are not unreasonable, considering the dispute associated with this medical request and the amount of litigation required to resolve this issue. The Board, therefore, affirms the Special ALJ's award of 28 hours of attorney fee time at the rate of \$125 per hour in the amount of \$3,500.

---

<sup>2</sup> K.S.A. 2003 Supp. 44-510h(a).

Claimant's attorney has requested additional attorney fees for the time associated with the appeal to the Board from the Special ALJ's decision.

The Board is reluctant to make a determination regarding the appropriateness of these fees without affording the parties an opportunity to have a hearing and present evidence. As noted above, the Special ALJ made no determination regarding the attorney fees associated with the appearance by the parties before and in preparation of their presentations to the Board. Additionally, the Special ALJ failed to discuss the expenses itemized and attached to claimant's attorney's brief to the Board. Claimant's attorney submitted a total request for \$468.70 in expenses. The Board notes that K.S.A. 44-536 makes no mention of expenses when discussing attorney fees. However, K.S.A. 2003 Supp. 44-510k(c) does allow for awarding of costs when post-award litigation occurs on a claimant's behalf. Costs are described as including,

[W]itness fees, mileage allowances, any costs associated with reproduction of documents that become a part of the hearing record, the expense of making the record of the hearing and such other charges as are by statute authorized to be taxed as costs.<sup>3</sup>

K.S.A. 44-555c grants the Board jurisdiction to review the decisions, orders and awards of an administrative law judge. The review by the Board deals with questions of law and fact as presented and determined by the administrative law judge. As the Special ALJ failed to rule on the items listed in the expense itemization, the Board remands this matter back to the Special ALJ, along with the question of additional attorney fees, for his determination.

**WHEREFORE**, it is the finding, decision, and conclusion of the Appeals Board that the Post-Award Medical Award of Special Administrative Law Judge Jeff K. Cooper dated June 14, 2004, should be affirmed with regard to claimant's request for a C-Leg prosthetic device and with regard to the attorney fees awarded in the amount of 28 hours at \$125 per hour totaling \$3,500. The matter is remanded back to the Special Administrative Law Judge for a hearing and determination regarding the additional attorney fees time included in the exhibit attached to claimant's brief and marked as Exhibit A, and the expenses itemized in the exhibit attached to claimant's brief to Board and marked as Exhibit B.

**IT IS SO ORDERED.**

---

<sup>3</sup> K.S.A. 2003 Supp. 44-510k(c).

Dated this \_\_\_\_ day of August 2004.

---

BOARD MEMBER

---

BOARD MEMBER

---

BOARD MEMBER

c: David H. Farris, Attorney for Claimant  
Nathan Burghart, Attorney for Respondent and its Insurance Carrier  
Jeff K. Cooper, Special Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director